Moreover, we do not think routing and gateway conditions can be meaningful in terms of the "public interest" as affected by the Clayton

[15]

Act unless they are imposed by reference to the product market and the geographic market. The Commission's primary concern is the "public interest," not "private interest." To impose routing and gateway conditions outside the context of the relevant markets either fails to employ Clayton Act standards as relevant to the public interest or assumes that private interest is consistently compatible with the public interest.

Therefore, we hold that the Commission must define the "line of commerce" and "section of the country" in which to appraise the probable competitive effects of the proposed merger and must determine whether the effect of the merger "may be substantially to lessen competition" or "tend to create a monopoly." The reason the Commission must make such findings is, most precisely, the fact that antitrust policy, to be given any effect whatsoever, must be measured in terms of criteria that have been developed by Congress and the courts.[34] If an erroneous statutory construction lies hidden in vague or insufficient findings then important statutory prerequisites to merger may be overlooked.[35]

Applying that holding to the present case, we conclude that the Commission has failed to make sufficient findings to accommodate section 5(2) of the Interstate Commerce Act with section 7 of the Clayton Act.

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[34] In a recent article Professor Handler and Mr. Robinson have noted that "whatever the guidelines for ascertaining whether a merger may have the proscribed anticompetitive effects, they are not in the legislative text and must inevitably be defined by the highest court." Handler & Robinson, *The Supreme Court v. Corporate Mergers*, Fortune, January, 1965.

[35] See United States v. Carolina Carriers Corp., 1942, 315 U.S. 475, 489.

[16]

The Commission's conclusion concerning the anticompetitive effects of the proposed merger is reflected in its following statement:

> "Except in portions of Florida, the over-all reduction in rail competition in the Southeastern States will be relatively moderate and inconsequential when viewed in the light of the alternative rail service that will be provided by competitors of the merged company at most of the major industrial centers in the affected area. With few exceptions, vigorous rail competition will continue to flourish in the territory served by the merged company. The impact of any lessening of rail competition that might result from this merger will be minimized by the increasingly strong competition that the merged company will encounter from other modes of transportation."

320 I.C.C. at 211, 212. The Commission noted that Tampa and the central and western portions of Florida are served by no other railroads except Seaboard and Atlantic Coast Line. It recognized that the merger would supplant the duopoly with a rail monopoly. 320 I.C.C. at 164-65. The Commission's conclusion that the reduction of rail competition caused by the proposed merger would not be substantial, 320 I.C.C. at 167, was determined by reference to rail competition in the Southeastern States as a whole.[36] Furthermore, the Commission

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[36] The Supreme Court has noted that "if anticompetitive effects of a merger are probable in 'any' significant market, the merger—at least to that extent—is proscribed. . . . [by section 7]. To illustrate: If two retailers, one operating primarily in the eastern half of the Nation, and the other operating largely in the West, competed in but two mid-Western cities, the fact that the latter outlets represented but a small share of each company's business would not immunize the merger [under section 7] in those markets in which competition might be adversely affected. On the other hand, that fact would, of course, be properly considered in determining the equitable relief to be decreed." Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 337 & n. 65.

[17]

noted the growth in motor and water transportation service in recent years in Tampa and the surrounding area. See 320 I.C.C. at 152-53. And its conclusion that the reduction in competition that will result from the merger will have no appreciable injurious effect upon shippers and communities, 320 I.C.C. at 167, was apparently by reference to other modes of transportation—motor carriers, air carriers, water carriers and pipelines—operating in the Southeastern States.

It may be that the relevant geographical market is the Southeastern States as a whole. But the proper question to be asked in determining the appropriate "section of the country" is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate."[37] The geographic market selected must both correspond to the commercial realities of the industry and be economically significant. Although the geographic market in some instances may encompass the entire Nation, under other circumstances it may be as small as a single metropolitan area.[38]

It may be that the relevant service market includes modes of transportation other than railroads. But the fact

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that other modes of transportation operate within the geographic area or areas, within which the anticompetitive effects of a merger are to be judged, is not determinative of the relevant service market. Similarly, reference to tonnage and dollar aggregates to show the decline of railroad transportation and rise of other modes of transportation, and such statistics as the number of

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[37] United States v. Philadelphia Nat'l Bank, 1963, 374 U.S. 321, 357.
[38] See Brown Shoe Co. v. United States, 1962, 370 U.S. 294, 336-37.

truck registrations in an area, are not, in themselves, determinative. The outer boundaries of a service market are to be determined by the reasonable interchangeability of use or the cross-elasticity of demand between the service itself and substitutes for it. It should be noted, however, that within this broad market, well-defined submarkets may exist, which in themselves constitute service markets for antitrust purposes. The boundaries of such a submarket may be determined by examining such practical indicia as industry or public recognition of the submarket as a separate economic entity, the service's peculiar characteristics and uses, unique service facilities, distinct customers, distinct prices and sensitivity to price changes.[39]

The United States, acting through the Attorney General, requests that the merger of the Seaboard Air Line and Atlantic Coast Line be *permanently* enjoined. While a three judge district court has power to enjoin the *orders* of the

[19]

Commission

authorizing a merger, we doubt if such a court has the power to permanently enjoin the *merger*. See 28 U.S.C. § 2321. Furthermore, the three-judge district court is limited to determining whether the Commission made any errors of law, whether its action was arbitrary, capricious, or an abuse of its discretion, and, upon review of the whole record, whether its findings of fact are supported by substantial evidence.[40] The United States' request that this Court permanently enjoin the merger would require that the Court go beyond the present record. We would have to find that upon no set facts

[39] See *id.* at 325. Thus it may be that railroads constitute at least a submarket for the transportation of heavy-loading, low value bulk commodities due to cost and service advantages available to railroads.

Just as a service submarket may have section 7 significance as the proper "line of commerce," so may a geographic submarket be considered the appropriate "section of the country." See *id.* at 336.

[40] See Brotherhood of Maintenance of Way Employees v. United States, 221 F.Supp. 19, 24, *aff'd mem.*, 375 U.S. 216 (1963).

which the applicants might present could the merger be found to be in the "public interest." For this Court to enjoin permanently the merger would require that we invade the long-established province of the Commission. Resolving such considerations is a complex task which requires extensive facilities, expert judgment and considerable knowledge of the transportation industry. The wisdom and experience of the Commission, not of the courts, must determine whether the proposed consolidation is "consistent with the public interest."[41] The United States' request for a permanent injunction against the merger is accordingly denied.

[20]

Intervening-plaintiff Railway Labor Executives' Association contends that the terms and conditions imposed by the Commission to protect the interests of the railroad employees affected are inadequate and violate section 5(2)(c)(4)[42] and section 5(2)(f)[43] of the Interstate Commerce Act and are

[41] McLean Trucking Co. v. United States, 1944, 321 U.S. 67, 87-88.

[42] "In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: . . . (4) the interest of the carrier employees affected." 49 U.S.C. § 5(2)(c)(4).

[43] "As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees." 49 U.S.C. § 5(2)(f).

unsupported by adequate, clear, and precise findings. The Association requests that the orders of the Commission should be declared invalid on these grounds. The Association's request, as its brief recognizes, is based on the assumption

[21]

that the Commission's orders authorizing the merger are otherwise approved. Since the Commission's orders must be enjoined for the reasons discussed above, consideration of the Association's contentions would be premature at this time.

The Commission found that under the merger plan the Mercantile-Safe Deposit and Trust Company will acquire power to control the merged company. It would be premature at this time for this Court to pass upon the question of whether Mercantile's power of control would be consistent with the public interest without requiring it to be considered as a carrier under section 5(3)[44] of the Interstate Commerce Act.

The orders of the Interstate Commerce Commission served December 13, 1963 and March 6, 1964 authorizing a merger of the properties and franchises of Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company will be annulled and set aside and the enforcement of said orders enjoined, all without prejudice to further proceedings before and further findings and orders by the Commission not inconsistent with this opinion.

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[44] 49 U.S.C. § 5(3).

This the 13th day of May 1965.

Richard T. Rives
United States Circuit Judge

Bryan Simpson
United States District Judge

William A. McRae, Jr.
United States District Judge.

IN THE

United States District Court

FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FLORIDA EAST COAST RAILWAY COMPANY, a corporation,
Florida East Coast Building,
St. Augustine, Florida,

Plaintiff,

versus

No. 64-64-Civ.J.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Defendants.

Before RIVES, Circuit Judge, and SIMPSON and McRAE, District Judges.

JUDGMENT

Pursuant to the opinion of the court this day entered, IT IS ORDERED, ADJUDGED and DECREED by the court that the orders of the Interstate Commerce Commission served December 13, 1963 and March 6, 1964 authorizing a merger of the properties and franchises of Atlantic Coast Line Railroad Company into Seaboard Air Line Railroad Company, copies of which orders are attached to the original complaint in this cause, be and the same are hereby annulled and set aside and the enforcement of said orders is enjoined, all without prejudice to further proceedings before and further findings and orders by the Interstate Commerce Commission not inconsistent with the said opinion.

Done this the 13th day of May 1965.

Richard T. Rives
United States Circuit Judge

Bryan Simpson
United States District Judge

William A. McRae, Jr.
United States District Judge

APPENDIX B

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APPENDIX B

ORDER

At a Session of the
INTERSTATE COMMERCE COMMISSION
held at its office in Washington, D. C.,
on the 2nd day of December A.D. 1963.

Finance Docket No. 21215

SEABOARD AIR LINE RAILROAD COMPANY—MERGER—
ATLANTIC COAST LINE RAILROAD COMPANY

Finance Docket No. 21254

ATLANTIC COAST LINE RAILROAD COMPANY BONDS

Investigation of the matters and things involved in these proceedings having been made, a hearing having been held, oral argument having been heard, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report and the report of the hearing examiner is hereby referred to and made a part hereof:

It is ordered, That the motions of several interveners that the application be dismissed, be, and they are hereby, denied;

It is further ordered, That the petition of Florida East Coast Railway Company for further hearing be, and it is hereby, denied;

It is further ordered, That subject to the terms, conditions and modifications referred to in the aforesaid report, (a) the merger of the properties and franchises of the Atlantic Coast

Line Railroad Company into the Seaboard Air Line Railroad Company (name to be changed to Seaboard Coast Line Railroad Company) for ownership, management and operation; (b) the acquisition by the latter of sole or joint control of carriers subsidiary to or affiliated with the Atlantic Coast Line Railroad

[2]

Company through ownership of stock or lease; (c) the acquisition by the Seaboard Air Line Railroad Company, as successor in interest, of trackage rights and joint use of certain lines of railroad now used by the Atlantic Coast Line Railroad Company; (d) the transfer of the outstanding motor carrier operating rights of Atlantic Coast Line Railroad Company to the Seaboard Air Line Railroad Company pursuant to the approved plan of merger; and (e) by virtue of such merger, the acquisition of control of Seaboard Air Line Railroad Company, the surviving corporation, by Atlantic Coast Line Company and, in turn, the acquisition of indirect control of Seaboard Air Line Railroad Company by Mercantile-Safe Deposit and Trust Company, be, and they are hereby, approved and authorized.

It is further ordered, That (a) the issuance by Seaboard Air Line Railroad Company of 3,839,345 shares of $20 per share par value common stock and scrip certificates representing fractional shares in conversion of outstanding capital stock of the Atlantic Coast Line Railroad Company pursuant to the aforesaid plan of merger, and (b) the assumption by the said Seaboard Air Line Railroad Company of the obligations and liabilities of the Atlantic Coast Line Railroad Company existing on the date of the merger, including obligations of companies subsidiary to or affiliated with the latter, which are contingently guaranteed either solely by Atlantic Coast Line Railroad Company, or jointly with other guarantors, upon the terms and for the purposes described, be, and they are hereby, authorized;

It is further ordered, That (a) the proposed Modification Indenture of the Atlantic Coast Line Railroad Company to the First, Second, Third and Fifth Supplemental Indentures, dated March 1, 1950, June 30, 1952, July 1, 1952, and March 1, 1955, respectively, to its General Mortgage dated March 1, 1950, modifying the sinking fund requirements with respect to its Bonds of Series A, B, C and D, in the manner and form set forth in the application filed in Finance Docket No. 21254 and in the proposed Modification Indenture, all as described in the aforesaid report, be, and

[3]

it is hereby, authorized, contingent upon and concurrent with the consummation of the merger herein authorized, and (b) the Commission's Orders of May 26, 1950, in Finance Docket No. 16961; April 10, 1952, in Finance Docket No. 17667; June 23, 1952, in Finance Docket No. 17791; and March 25, 1955, in Finance Docket No. 18874 be, and they are hereby, modified accordingly;

It is further ordered, That, except as herein authorized, the aforesaid securities shall not be sold, pledged, repledged, or otherwise disposed of by Seaboard Air Line Railroad Company, or by the Atlantic Coast Line Railroad Company, or by the merged company, unless or until so ordered or approved by the Commission;

It is further ordered, That nothing herein shall be construed to imply any guaranty or obligation as to said securities or dividends thereon on the part of the United States;

It is further ordered, That the merged company shall report concerning the matters involved herein in conformity with the orders of the Commission, Division 4, dated August 9, 1946, as amended, respecting applications filed under section 20a of the Interstate Commerce Act (49 CFR 56.4 and 56.6);

It is further ordered, That the merged company, when establishing changes in tariffs, rates and charges as may be required in effectuation of transactions approved herein may do so upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and shall in schedules making such changes refer to this order by date and docket number;

It is further ordered, That if the authority herein granted is exercised, the merged company shall submit for the consideration and approval of the Commission three copies of the journal entries required to record the transactions authorized herein;

[4]

It is further ordered, That this certificate and order shall become effective from and after 30 days from the date of service;

And it is further ordered, That, if the authority granted in the certificate herein is not exercised within one year from the effective date of this order, it shall be of no further force and effect.

By the Commission.

Harold D. McCoy
Secretary

(SEAL)

APPENDIX C

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APPENDIX C

SERVICE DATE
March 6, 1964

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 4th day of March A. D. 1964.

Finance Docket No. 21215

SEABOARD AIR LINE RAILROAD COMPANY–
MERGER–
ATLANTIC COAST LINE RAILROAD COMPANY

Finance Docket No. 21254

ATLANTIC COAST LINE RAILROAD COMPANY BONDS

Upon consideration of the record in the above-entitled proceeding, of the petitions, filed January 13, 1964, on behalf of (a) Union Bag-Camp Paper Corporation, (b) Florida East Coast Railway Company, (c) Gulf, Mobile and Ohio Railroad Company, (d) Illinois Central Railroad Company (including request for oral argument), (e) Central of Georgia Railway Company and Savannah & Atlanta Railway Company, (f) Southern Railway Company et al., and (g) Railway Labor Executives' Association, for reconsideration of the report and order of December 2, 1963; and of the reply of applicants, filed February 3, 1964; and

It appearing, That the employee-protective conditions set forth in *Southern Ry. Co.–Control–Central of Georgia Ry. Co.*, 317 I.C.C. 557, as supplemented in 317 I.C.C. 729, were imposed herein; that on February 27, 1964, the said conditions

were clarified; and that such conditions as clarified are, and continue to be, applicable to this proceeding;

It further appearing, That, subject to certain restrictions, the Southern Railway Company operates over a line of the Atlantic Coast Line Railroad Company between Hardeeville, S. C., and Jacksonville, Fla., via Savannah, Ga., under trackage agreements with the said Atlantic Coast Line Railroad Company; that the said trackage agreements, as interpreted by the parties thereto, may preclude the Southern Railway Company from interchanging freight traffic at Savannah with either Central of Georgia Railway Company or the Savannah & Atlanta Railway Company in connection with movements to, from, or through the Jacksonville gateway;

It further appearing, That Condition 8, relating to the opening of the Jacksonville gateway by the merged company should be clarified and modified to require the Seaboard-Coast Line Railroad Company to provide the Central of Georgia Railway Company, the Savannah & Atlanta Railway Company and other affiliates and subsidiaries of the Southern Railway Company with the right to interchange freight traffic with the Southern Railway Company at Savannah in connection with movements to, from or through the Jacksonville gateway via the Hardeeville-Jacksonville segment;

And it further appearing, That, except as the petitions are granted for the purpose of the modification herein approved, the material matters set forth in the petitions have been considered by the Commission and discussed in its report, that the decision is based on adequate findings supported by the record, that there has been presented no error of fact or law with respect to the matters complained of by petitioners, that no showing has been made warranting reconsideration of the said decision, and that further oral argument is unnecessary:

[2]

It is ordered, That the proceeding be, and it is hereby, reopened for reconsideration solely for the purpose of modifying Condition No. 8 of the routing and gateway conditions; and that the said condition be, and it is hereby, modified as follows:

Condition No. 8, after the word "gateway" at the end of Condition No. 8, delete period, insert comma in lieu of period, and add the following:

and, *Provided further* that the Seaboard Coast Line Railroad Company shall take such further action as may be necessary to permit the interchange of freight traffic between Southern Railway Company and Central of Georgia Railway Company, Savannah & Atlanta Railway Company and other affiliates and subsidiaries of the Southern at Savannah in connection with movements to, from, or through the Jacksonville gateway by the Southern Railway Company under existing trackage arrangements permitting operations by that rail carrier between Hardeeville and Jacksonville over a line of the Seaboard Coast Line Railroad Company.

It is further ordered, That in all other respects the said petitions be, and they are hereby, denied.

And it is further ordered, That the order of December 2, 1963, as herein modified, shall become effective from and after 35 days from the date of service.

By the Commission.

HAROLD D. McCOY
Secretary

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APPENDIX D

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APPENDIX D

STATUTES INVOLVED

ADMINISTRATIVE PROCEDURE ACT
TITLE 5 U. S. CODE

SEC. 7 – HEARINGS

(c) EVIDENCE. – Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy, provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

SEC. 8 – DECISIONS

In cases in which a hearing is required to be conducted in conformity with section 7 –

(b) SUBMITTALS AND DECISIONS. – Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1)

proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record: and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SEC. 10 – JUDICIAL REVIEW

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion–

(a) RIGHT OF REVIEW. – Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(c) REVIEWABLE ACTS. – Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(e) SCOPE OF REVIEW. – So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

JUDICIARY AND JUDICIAL PROCEDURE
TITLE 28.–U. S. CODE

SEC. 1253–DIRECT APPEALS FROM DECISIONS OF THREE-JUDGE COURTS

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

SEC. 1398—INTERSTATE COMMERCE COMMISSION'S ORDERS

Except as otherwise provided by law, any civil action to enforce, suspend or set aside in whole or in part an order of the Interstate Commerce Commission shall be brought only in the judicial district wherein is the residence or principal office of any of the parties bringing such action.

SEC. 2321—PROCEDURE GENERALLY; PROCESS

The procedure in the district courts in actions to enforce, suspend, enjoin, annul or set aside in whole or in part any order of the Interstate Commerce Commission other than for the payment of money or the collection of fines, penalties and forfeitures, shall be as provided in this chapter.

SEC. 2322.—UNITED STATES AS PARTY

All actions specified in section 2321 of this title shall be brought by or against the United States.

INTERSTATE COMMERCE ACT
TITLE 49—U. S. CODE

SEC. 5, PAR. (2).—UNIFICATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease or contract to operate the properties, or any part thereof, of an-

other; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subdivision (a), of this paragraph, the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and in case carriers by motor vehicle are involved, the persons specified in section 305(e) of this title), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set aside application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and

will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6) of this section, is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(f) As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period,

following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

SEC. 5, PAR. (3).—NONCARRIER DEEMED CARRIER UPON ACQUIRING CONTROL

Whenever a person which is not a carrier is authorized, by an order entered under paragraph (2) of this section, to acquire control of any carrier or of two or more carriers, such person thereafter shall, to the extent provided by the Commission in such order, be considered as a carrier subject to such of the following provisions as are applicable to any carrier involved in such acquisition of control . . . sections 20a (2)-(11), and 314 of this title, (which relate to issues of securities and assumptions of liability of carriers), including in each case the penalties applicable in the case of violations of such provisions. In the application of such provisions of sections 20a and 314 of this title, in the case of any such person, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance of its service to the public by each carrier which is under the control of such person, that it will not impair the ability of any such carrier to perform such service, and that it is otherwise consistent with the public interest.

(11) The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate

consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any power granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

NATIONAL TRANSPORTATION POLICY
TITLE 49—U. S. CODE

PRECEDING SECS.—1, 301, 901, AND 1001

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regu-

lation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE TITLE 15—U. S. CODE

SEC. 18.—ACQUISITION BY ONE CORPORATION OF STOCK OF ANOTHER

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no

corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly

. . . . . .

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the . . . Interstate Commerce Commission. . . .

SEC. 21—That authority to enforce compliance with sections 2, 3, 7, and 8 of this Act by the persons respectively subject thereto is hereby vested in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended . . .